



**U.S. DOL's 401(k) Rule**  
**Analysis of Public Comments**

June 22, 2026

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## Introduction

On March 30, 2026, the U.S. Department of Labor (DOL) proposed a new rule that would establish a process-based safe harbor for fiduciaries selecting investment options for participant-directed defined contribution retirement plans, which, if met, would give rise to a presumption that the fiduciaries satisfied their duty of prudence under the Employee Retirement Income Security Act (ERISA). See 91 Fed. Reg. 16088. The proposed rule identifies six factors a fiduciary should consider when selecting an investment option—performance, fees, liquidity, valuation, benchmarking, and complexity—and outlines examples of prudent and imprudent processes for evaluating those factors.

The rule has the potential to significantly curb meritless class actions targeting 401(k) plans. And although the rule applies to all investment selections, it will be particularly welcome by fiduciaries considering offering exposure to alternative assets offered by private equity firms, real estate fund managers, and other alternative fund managers. The proposal is intended in part to implement Executive Order No. 14430, *Democratizing Access to Alternative Assets for 401(k) Investors*, and DOL predicts that the rule’s “flexibility would allow defined contribution plan fiduciaries to consider a wider array of financial vehicles and markets when designing menus that prioritize risk-adjusted returns, rather than remaining anchored to a traditional investment approach of public equities and debt.” *Id.* at 16122.

Participants in 401(k) plans, and the companies that offer them, would benefit greatly from a reduction in expensive class action litigation and increased access to diversified investment options that include exposure to alternative assets. Accordingly, the proposal could prove the most impactful rule issued by DOL during President Trump’s second term. Reflecting that importance, DOL received over 47,000 comments from the public during the comment period. This paper briefly summarizes the comment docket.

## I. The Docket From 30,000 Feet

As is common in high-profile rulemakings, DOL received a large number of form comments based on templates provided by organizations both supporting and opposing the proposal. These form comments account for the overwhelming majority of total submissions—approximately 43,000. The single largest set of form comments opposed the proposal, while several other form comments supported it. Altogether, approximately 12,000 form comments supported the proposal, and around 31,000 opposed it.

DOL also received several thousand short, individualized comments both supporting and opposing the proposal, ranging in length from a handful of words to a few hundred. These types of comments, though not following a strict template, often also result from organized campaigns and are usually less substantive than comments submitted as attachments through the Regulations.gov portal.

Finally, DOL received more than 200 comments of 500 words or more, with some extending well over 100 pages. Of these substantial comments, a pronounced majority supported the proposed rule, with 121 supporting and 101 opposing the DOL proposal.

## II. Supportive Comments

Comments supporting the rule spanned essentially every category of commenter in the record, including employer plan sponsors, representatives of the financial services industry (ERISA asset managers and investment advisers, alternative asset managers, and recordkeepers), minority business and community organizations, government officials, academics, law firms, a labor union, and 401(k) investors.

**ERISA Asset Managers And Recordkeepers.** The proposal earned the support of organizations closest to the everyday operation of 401(k) plans: the asset managers who build and run the investment options, and the recordkeepers who administer the plans that hold them.

Both the Securities Industry Financial Markets Association (SIFMA) and the Investment Company Institute (ICI)—trade associations representing asset managers—expressed support for the rule, praising its asset-neutral approach and safe harbor framework. Both commenters also offered suggestions for strengthening the rule. SIFMA, for example, suggested that the rule should make clear that fiduciaries “have discretion to determine whether a particular factor is relevant” (page 3), that “the examples are intended only as guideposts” (page 8), and that the examples should be revised to recognize that the “potential [valuation] conflicts” mentioned in the proposal are actually “already significantly regulated” (page 5). SIFMA further suggested on page 10 of its letter that the Department amend Prohibited Transaction Exemption (PTE) 77-4 “to encompass a broader range of investment vehicles” beyond open-end mutual funds. (PTE 77-4 is the Labor Department prohibited transaction exemption that permits a plan to invest in mutual funds managed by a firm that is an adviser to the plan). ICI, for its part, submitted an economic analysis demonstrating how including private assets in investment portfolios can meaningfully increase diversification and improve risk-adjusted returns. Both SIFMA and ICI also emphasized the need for the rule to accommodate collective investment trusts, and in particular suggested that the Department revise the examples tying the rule’s liquidity requirements to Securities and Exchange Commission (SEC) Rule 22e-4, which governs open-end mutual funds, to avoid “bias both by plan fiduciaries and regulators for open-end mutual funds [that] may undermine the Department’s asset-neutral principle” (SIFMA page 6), and to avoid “express[ing] a preference that non-mutual fund DIAs follow” a “regulatory framework” that is “inapt” for their design (ICI page 24). Both also suggested other possible adjustments to the proposed rule, such as combining the performance and benchmark factors.

The Defined Contribution Alternatives Association (DCALTA), which represents asset managers and service providers, as well as plan sponsors, praised the proposal for “provid[ing] a voluntary, workable safe harbor that will meaningfully reduce the chilling effect of meritless litigation” (page 1). In the executive summary of its letter, DCALTA encouraged DOL to revise the proposed rule’s examples to

“ensure that collective investment trusts (‘CITs’) are eligible for the safe harbor on the same, vehicle-neutral terms as [SEC-]registered funds,” and also to “modernize” PTE 77-4.

The SPARK Institute, which represents plan recordkeepers, investment managers, brokerage firms, and others, commented that the proposal “reflects the key principles that should guide the evaluation of any decisions made by an ERISA fiduciary” (page 2), and supported DOL’s efforts to ensure that employers have “the flexibility to choose, and participants should have access to, retirement products and services that incorporate alternative investments” (page 3). SPARK also suggested targeted changes to the rule, including modifying guidance that could be read to prefer mutual funds over CITs, and encouraged DOL to “updat[e] PTE 77-4 so that its framework covers all pooled investment vehicles, not just registered mutual funds” (page 15). SPARK likewise suggested that the Department “update” PTE 77-4 to cover “all pooled investments, not just registered mutual funds” (page 1).

The American Bankers’ Association (ABA) “endorse[d] the Department’s establishment of a Safe Harbor” that “properly frames the duty of prudence as principles-based, asset neutral, and process-driven” (pages 1–2). ABA recommended that the Department “clarify” how the rule interacts with CITs to align the rule with existing “banking law requirements” and prevent unwarranted differential treatment (pages 9). ABA also urged the Department to expand PTE 77-4 to cover investment vehicles that did not exist or were not prevalent in 1977 when PTE 77-4 was issued (page 13).

The Coalition of Collective Investment Trusts (CCIT), representing fund sponsors and asset managers in the collective investment trust industry, “commend[ed]” the Department’s proposal and indicated it was “fully aligned” with the Department’s “overarching goals” (page 1). CCIT suggested that the Department make certain modifications to prevent the rule from “inadvertently and unnecessarily disfavor[ing]” CITs (page 2). CCIT also highlighted potential improvements with respect to the rule’s liquidity factor, suggesting that plan fiduciaries could prudently rely on a collective investment trust trustee with a written liquidity risk management program rather than, as the rule currently provides, compliance with SEC Rule 22e-4 (page 2).

A roster of the country’s largest investment managers, who collectively manage over \$13 trillion, also filed substantial comments in support of DOL’s proposal, including State Street Investment Management (\$5.6 trillion in AUM, including \$979.2 billion in defined-contribution plans in the United States), Capital Group (\$3.2 trillion in AUM, including \$475 billion in target-date funds), T. Rowe Price (\$1.83 trillion in AUM), the Teachers Insurance and Annuity Association of America (\$1.5 trillion in AUM), Federated Hermes (\$907.1 billion in AUM), and Edelman Financial Engines (\$300 billion in AUM).

The major recordkeepers that administer workplace retirement plans likewise lined up behind the proposal, including Empower, Vanguard, Charles Schwab, T. Rowe Price, and Cetera. Collectively these firms serve well over 34 million retirement plan participants. Their support carries particular weight because recordkeepers see, in real time, how fiduciary standards translate into the choices actually offered to plan participants.

**Investment Advisers And Consultants.** The American Retirement Association (ARA), which represents roughly 40,000 members who provide consulting and administrative services to plans, IRAs, and workers, emphasized that the proposal properly focuses “on whether the fiduciary engaged in a prudent process at the time of decision” (page 1), and offered several “refinements” to further cut-off “issues likely to generate claims and pleading disputes” (page 5). ARA also noted its support for the expansion of PTE 77-4 or the creation of a “similar exemption” to provide relief beyond open-end mutual funds (page 16). And Aon said on page 2 of its letter that “the Proposed Rule is a significant and positive step toward” mitigating regulatory and litigation uncertainty, and suggested, among other things, that the rule should clarify “that the six-factor framework for ‘appropriate consideration’ should be applied pragmatically in order to allow for flexible approaches to comparative analysis and benchmarking.” Individual financial advisors also submitted comments supporting the proposed rule.

The Institutional Limited Partners Association (ILPA), which represents institutional investors, likewise registered its support for the rule, noting its “agree[ment] with SEC Commissioner Uyeda that the ‘optimal

level of exposure to private investments' for defined contribution plans is 'not zero'" (page 1). ILPA also offered suggestions to "align with the institutional process that LPs follow" (page 1).

**Alternative Asset Managers.** The alternative asset industry strongly supported the proposal. Trade associations representing every major private-asset class filed supportive comments: private equity, private credit, real estate, infrastructure, and insurance-based lifetime income. The American Investment Council, Managed Funds Association, LSTA, Real Estate Roundtable, and Institute for Portfolio Alternatives filed comments that spanned hundreds of pages in the aggregate, explaining how exposure to alternative assets can increase diversification, increase returns, and reduce risk for 401(k) investors through products such as target-date funds that are well-suited for managing liquidity. These associations suggested revisions to make the rule clearer and ensure that it operates in an asset-neutral manner and does not inadvertently favor SEC-registered mutual funds over CITs, particularly with respect to the liquidity and valuation factors, which often will be particularly relevant in practice to investment options that include allocations to private assets. For example, these commenters urged DOL not to impose new standards (such that valuations of investment options must be "conflict-free") where products are already subject to reticulated regulations. Some of these commenters, such as the Managed Funds Association and LSTA, also suggested modernizing PTE 77-4.

Individual alternative asset managers also registered their strong support for the proposal. Apollo Global Management provided data demonstrating the benefits of private-markets and lifetime-income exposure. And Partners Group, a global private-markets firm managing programs across private equity, private credit, infrastructure, and real estate, commended the Department for crafting a process-based, asset-neutral safe harbor to counter the chilling effect of class-action litigation.

The annuity and lifetime-income side was equally emphatic. The Insured Retirement Institute, whose members account for roughly 90 percent of U.S. annuity assets, "strongly supports" the Department's recognition that prudence is a process-based inquiry (page 1), and the American Council of Life Insurers "strongly supports the Department's overall goal" of reducing litigation risk that limits diversification (page 1). Like the associations representing private-asset managers, the insurance industry associations suggested targeted revisions to the proposal to clarify the safe harbor's application to guaranteed lifetime income options.

**Plan Sponsors And Business Groups.** Each of the major organizations representing employer sponsors of 401(k) plans submitted comments supporting the rule.

- The ERISA Industry Committee (ERIC), which represents the country's largest employers in their capacity as plan sponsors, emphasized on page 3 of its letter that "the plaintiffs' bar has exploited ERISA's civil enforcement provisions as a weapon by opportunistically attacking large plan sponsors and fiduciaries in a systematic way." ERIC thus applauded DOL's proposal as "a crucial step in restoring balance, limiting meritless litigation, and reducing uncertainty and improving outcomes for retirement savers" (page 2). ERIC asked DOL to consider revising the safe harbor and examples to ensure that the rule is flexible enough for plan fiduciaries to use, and does not impose unnecessary burdens. For example, ERIC recommended clarifying that the rule's examples are merely illustrative, and not required to be followed in all their particulars. ERIC also suggested on page 9 of their letter that the examples overemphasize reliance on external investment advisers; because "a retirement plan investment committee might delegate decision-making to an internal leader with appropriate expertise and internal investment experts," ERIC recommended that DOL "add examples where internal expertise is used and sufficient to meet the requirements of the safe harbor." Additionally, ERIC noted the need to update PTE 77-4 "to be agnostic with respect to vehicle structure" (page 18).
- The American Benefits Council (ABC), speaking for more than 220 of the world's largest corporate plan sponsors, on page 2 of its letter called the proposal "exactly the type of guidance that is needed to address ... [t]he explosion of baseless litigation" against plans and fiduciaries, and added on page 6 that the litigation "has benefited almost exclusively the plaintiffs' lawyers." Like ERIC, ABC requested several adjustments to the proposal to improve fiduciaries' ability to use the safe harbor and ensure that the rule is not interpreted as establishing minimum requirements under ERISA.

- The U.S. Chamber of Commerce welcomed the Department’s asset-neutral guidance and emphasized that ERISA judges fiduciaries by process rather than outcomes, while suggesting that the Department clarify that the safe harbor is not the only way to fulfill the duty of prudence. Among other things, the Chamber also suggested that DOL remove or revise language that could be interpreted as requiring plan fiduciaries to use external investment advisers, eliminate “subjective” terminology that could “unintentionally open the door to” litigation against plan sponsors and fiduciaries (page 7), and avoid imposing new or additional requirements on investment classes that are already heavily regulated by other agencies. The Chamber also noted that the rule’s use of SEC Rule 22e-4 for liquidity evaluations “may not be appropriate for funds that are not mutual funds,” and it recommended changes to the liquidity factor to avoid “overly burdensome and unnecessary” requirements (page 14). The Chamber further suggested that the Department update PTE 77-4 to reflect how “retirement plan investment structures have evolved significantly” since PTE 77-4 was issued (page 19).
- The Committee on the Investment of Employee Benefit Assets (CIEBA), which represents plan fiduciaries responsible for more than \$2 trillion in defined benefit and defined contribution assets on behalf of more than 17 million plan participants and beneficiaries, “support[s] the Department’s effort and respectfully urge[d] several targeted refinements ... to help ensure that the final rule supports sound fiduciary decision-making without constraining prudent innovation” (page 1) Among other things, CIEBA suggested that the rule “should recognize the important role of in-house fiduciaries and avoid encouraging unnecessary outsourcing” (page 2).

Organizations representing franchise businesses, minority-owned businesses, and small businesses also submitted supportive comments.

- The International Franchise Association “supports DOL’s Proposed Rule” and urged its adoption, noting that the franchise and employer community seeks the clarity and predictability the rule provides.
- The Hispanic Leadership Fund urged that expanded access to diversified retirement options is consistent with broadening opportunity for working families and the small businesses—many Hispanic-owned—that employ them.
- Advancing Black Businesses similarly suggested that the “rule could also help direct long-term capital to Black-owned businesses ... 97% of which have fewer than 20 employees” and “face barriers to accessing growth capital.”
- The Small Business & Entrepreneurship Council commented that the proposal “establishes a sensible, process-based safe harbor framework” (page 2), while encouraging DOL to adjust the proposed rule’s liquidity and valuation examples to maintain DOL’s asset-neutral approach and avoid prejudicing CITs and investment options containing exposure to private assets.
- The Small Business Administration’s Office of Advocacy similarly emphasized that “expanding access to alternative assets in employer-sponsored retirement plans can support capital formation for small businesses, while allowing small business employees to seek better risk-adjusted returns, consistent with their plan fiduciaries’ duties” (page 4).

**Workers And Retirement Investors.** The proposal also drew support from organized labor. The president of UAW Local 14 in Toledo, Ohio explained that newly hired General Motors workers no longer receive defined benefit pensions and now look almost entirely to defined-contribution plans to fund retirement. For those workers, the local’s president wrote, broader access to alternatives could improve diversification and long-term returns, and he concluded: “I strongly support this rulemaking and urge the Department of Labor to move forward with its adoption.” Some retiree advocates similarly supported the rule. The 60 Plus Association called the proposal “a vital course of action toward modernizing America’s retirement system,” arguing that everyday 401(k) savers have long been denied the private-market access available to public pensions and wealthy individuals.

**Current And Former Government Officials.** Elected officials at both the federal and state levels supported the proposal. Representatives Mike Lawler of New York and Josh Gottheimer of New Jersey wrote jointly to “express our bipartisan support” for the rule, explaining that its process-based framework “would not weaken ERISA’s fiduciary obligations” but would give fiduciaries clearer guidance (page 1). A large group of U.S. Senators led by Steve Daines of Montana described the rule as an important step toward expanding access to diversified options for the roughly 90 million Americans saving through defined-contribution plans. Dozens of Members of the House similarly urged the Department to finalize the “principled, asset-neutral” proposal and to “moderniz[e]” PTE 77-4” (page 2). And former House Financial Services Committee Chairman Jeb Hensarling supported the proposal, citing Council of Economic Advisers findings that younger cohorts realize higher risk-adjusted returns from a private-equity allocation.

State-level officials reinforced the support voiced by their federal counterparts. Former Nebraska State Treasurer John Murante, who also directed the Nebraska Public Employees Retirement Systems, commended the proposal for aligning defined-contribution plans with how modern institutional portfolios are built. And a bloc of Michigan state legislators filed letters of support, with one Senator observing that public-sector Michiganders saving through pensions “can already attest to the growth that private market assets can provide.”

**Academics.** Legal and financial-economics scholars supported the rule’s core design, and several paired that support with constructive suggestions. Professors Robert H. Sitkoff (Harvard Law School) and Max Schanzenbach (Northwestern University School of Law) wrote that they “find much to commend in the Proposal’s fiduciary investment analytics” (page 2), endorsing in particular its treatment of fees and its central point that a reasoned analysis of an illiquid alternative should not be viewed with greater suspicion than a traditional, marketable security. Professors Ian Ayres (Yale Law School) and Quinn Curtis (University of Virginia School of Law) also commended the Department for “rejecting categorical exclusion of alternative assets” and wrote that “the rule’s core framework is sound” (page 1), while expressing concern that the proposed safe harbor is too focused on fiduciaries’ analysis of investment products rather than participants’ use of those products, and accordingly urged the Department to adopt narrower, participant-focused guardrails such as a cap on a participants’ exposure to alternative assets.

Finance scholars who study private markets offered data-driven support. Professors David T. Robinson and Conrad Ciccotello each performed quantitative analyses (submitted with the American Investment Council’s comment) finding that including alternative assets in a portfolio would increase workers’ returns. And writing for the Financial Economists Roundtable, Edith Hotchkiss (Boston College) and colleagues recognized “a genuine basis for the Proposed Rule” because “long-term investors may earn a liquidity premium by holding illiquid assets” (page 1), while urging the Department to consider participant-level guardrails, such as age-based allocation limits.

Finally, the Committee on Capital Markets Regulation—a nonpartisan research organization whose membership is drawn from the academy, as well as finance, law, and accounting fields—wrote that it “is strongly supportive of the Proposal,” identifying frivolous-litigation risk as the primary deterrent that has kept alternatives out of 401(k) menus and caused those plans to underperform defined-benefit plans. CCMR also performed a study demonstrating that pooled vehicles with alternative asset sleeves would have enough liquidity to fulfill participant needs in even extreme scenarios. CCMR additionally suggested that the Department should “promptly amend” PTE 77-4 to ensure that it is “investment-vehicle neutral” (page vi).

### III. Opposition Comments

Most of the comments opposing the proposal were submitted by individual workers or retirees. The remaining comments generally were submitted by progressive public policy groups (such as Public Citizen, the Economic Policy Institute, and American Association for Justice), current and former government officials (e.g., a coalition of Democratic state attorneys general, a few Democratic Senators, and former DOL officials), and academics.

**Workers, Retirees, And Labor Unions.** Comments from individual workers and retirees opposing the rule generally expressed skepticism that exposure to alternative assets would benefit them, and contended that the rule would insulate plan sponsors and asset managers from liability for losses.

The AFL-CIO and American Federation of State, County, & Municipal Employees (AFSCME) also filed comments opposing the rule. The AFL-CIO urged the Department “to amend the Proposed Rule to clarify that certain alternative assets such as private equity, private credit, and cryptocurrency are unlikely to meet the Proposed Rule’s safe harbor framework for participant-directed 401(k) plans” (page 1). AFSCME similarly suggested that alternative assets are uncommon in 401(k) plans because they are inappropriate investments for individual participants.

**Government Officials.** Several Democratic members of Congress submitted comments opposing the proposal. Senator Jack Reed, for example, urged the Department to pause its effort, writing that, given the recent attention to private credit markets, “it would be irresponsible at this time to fling open the doors” to private credit in defined-contribution plans. Senator Edward J. Markey, joined by Senator Elizabeth Warren and Representative Stephen Lynch, characterized the proposal as “a dangerous rule that would expose Americans’ retirement savings to greater risk” (page 1). And a joint letter from Senator Bernie Sanders, Senator Elizabeth Warren, and Representative Bobby Scott warned that the rule would “strip long-held investor protections from retirement savers” (page 1).

A group of Democratic state attorneys general similarly argued that the rule would “weaken the high standard governing the duty of prudence” (page 2). They argued the proposed rule is contrary to law because it inverts ERISA’s worker-protective purpose, protecting fiduciaries instead of participants, and contended that the Supreme Court rejected a presumption like DOL’s current proposal in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014). They further warned on page 2 of their letter that the proposed rule would channel retirement savings into asset classes that they view as volatile and opaque (specifically cryptocurrency, private equity, and private credit) and that resulting losses would harm the States themselves by “increasing demand on our public assistance programs while simultaneously decreasing tax revenues.”

A few former Department of Labor officials also submitted comments opposing the proposal. Timothy Hauser wrote that the proposal would “leave plan participants to fend for themselves,” and would place “a large thumb on the scale in favor of fiduciaries,” contrary to the caselaw (page 2). And six former EBSA leaders and SOL attorneys argued that the proposal would “significantly weaken ERISA’s prudence standard” and should be withdrawn (page 1).

**Academics.** Some legal and financial academics also registered their opposition to the proposed rule. For example, Hilary Allen (American University Washington College of Law), who studies financial stability regulation, argued that crypto currencies should not be included in 401(k) plans and that “democratizing access” to alternative investments “means using 401(k) plans to create a market for illiquid investments that wealthy individuals and institutions have been struggling to sell.” And a collection of legal academics led by Norman Stein (Drexel University Kline School of Law) argued that the safe harbor was contrary to ERISA because “prudence is not defined by process alone.”

**Advocacy Groups.** Progressive organizations submitted some of the most detailed opposition comments, generally arguing that the proposal would strip ERISA’s core protections and benefit private-asset managers at workers’ expense.

- **Public Citizen** argued that savings plans should be “a lifeline to retirement security, not a dumping ground for schemes and untested ventures” (page 1).
- **Americans for Financial Reform Education Fund**, a coalition of more than 200 groups, opposed what it called a “misguided proposal to bail out the private equity industry” (page 1), and submitted plan-level data intended to show that alternatives have not delivered higher returns for defined-benefit plans.

- **The Economic Policy Institute** argued the rule would “gut protections for retirement savers” (page 1), challenging DOL’s suggestion that the proposed rule would increase risk-adjusted returns.
- **Better Markets** argued that the proposal would curtail participants’ access to the courts, in violation of ERISA.
- **The Roosevelt Institute** contended that the proposal is designed to “fundamentally weaken the standard for Americans’ retirement plans, full stop” (page 1), warning that participants could be defaulted into purportedly riskier, costlier options without meaningful choice.
- **Barbara Roper of the Consumer Policy Center** submitted detailed comments disputing that there is an ERISA litigation “epidemic” (page 2) and arguing that ERISA class actions have resulted in concrete benefits by prompting plan fiduciaries to remove high-cost, underperforming funds from plan menus.
- **AARP** similarly contended that “there is no evidence of a problem requiring regulatory intervention” (page 1), and “that most participants do not seek exposure to private market investments or cryptocurrencies” (page 2).

Other advocacy organizations submitting opposition comments included the Private Equity Stakeholder Project, Governing for Impact, the Democracy Defenders Fund, the National Employment Lawyers Association, the American Association for Justice, the Public Investors Advocate Bar Association, and the Institute for the Fiduciary Standard.

**Financial Services Industry.** A few organizations in the financial services industry submitted more measured criticisms of the proposal. The CFP Board, which certifies financial-planner professionals, supported an asset-neutral framework, but concluded the proposal “falls short of protecting retirement savers under” ERISA (page 1), arguing there is no evidence savers are demanding access to alternatives. Morningstar, Inc., a leading independent investment-research provider, similarly argued on the first page of its letter that the framework “does not go far enough to protect the retirement plan participants it is intended to serve.” Morningstar observed that existing law already lets fiduciaries include alternatives, that only about 2.9 percent of defined-contribution plans offered alternatives in 2024 (with roughly 0.1 percent of assets allocated to them), and warned on page 4 that the “significant deference” standard combined with a presumption of prudence “may weaken the effective fiduciary standard.”

## IV. Looking Ahead

DOL will spend the next few months closely scrutinizing the extensive comments it received on the proposal. It will work through the criticisms and suggestions for improvements offered by the rule’s supporters and decide what changes are warranted. DOL will consider, for example, whether its list of six factors should be expanded, contracted, and whether it should be presumptively exclusive. DOL also will consider whether and how to better clarify the role of the examples, and will weigh specific revisions to the safe harbor factors, such as its approach to the liquidity and valuation factors. And DOL will evaluate and respond to the critiques by the proposed rule’s opponents. However, the depth and range of support for the proposal, which is broader than the interests opposing the proposal, provides a strong foundation for a final rule. We expect DOL will move expeditiously to complete the rulemaking.

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